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S.A.(MD)No.373 OF 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD) Nos.373 of 2014 & 33 of 2020 and

M.P. (MD) No.1 of 2014

S.A. (MD) No.373 of 2014

Ramar

... Appellant / Appellant /
2nd Defendant

Vs.

1. Sundaralakshmi

... 1st Respondent / 1st Respondent /
Plaintiff

2. Amirtharaj

... 2nd Respondent / 2nd Respondent /
1st Defendant

3. Sundararaj

... 3rd Respondent / 3rd Respondent /
3rd Defendant

4. Kammaditchi

... 4th Respondent / 4th Respondent /
4th Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 15.04.2008 passed in A.S.No.249 of 2006 on the file of the Principal Subordinate Court, Madurai, confirming the judgment and decree dated 03.04.2006 passed in O.S.No.587 of 1992 on the file of the District Munsif, Thirumangalam.

For Appellant

: Mr.J.Barathan,
for Mr.T.R.Jeyapalam.

For R-3

: Mr.J.Gunaseelan Muthiah

For R-1

: Mr. K.Sekar
R2 & R4- Givenup

S.A. (MD) No.33 of 2020

Sundararaj

... Appellant / Appellant /
3rd Defendant

Vs.

1. Sundaralakshmi

... 1st Respondent / 1st Respondent /
Plaintiff

2. Amirtharaj

3. Ramar

4. Kammatitchi

... Respondents / Respondents /
Defendants 1, 2 & 4



Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 15.04.2008 passed in A.S.No.274 of 2006 on the file of the Principal Subordinate Court, Madurai, confirming the judgment and decree dated 03.04.2006 passed in O.S.No.587 of 1992 on the file of the District Munsif, Thirumangalam.

For Appellant : Mr.J.Gunaseelan Muthiah
For R-1 : Mr.K.Sekar
For R-3 : Mr.J.Barathan,
for Mr.T.R.Jeyapalam.

C O M M O N J U D G M E N T

These second appeals arise out of a suit for partition.

2. Sundaralakshmi filed O.S.No.587 of 1992 on the file of the District Munsif, Tirumangalam, for preliminary decree of partition to allot 1/2 share in the suit properties by metes and bounds. The case of the plaintiff is that she was born to the first defendant Amirtharaj through his wife Azhagammal in the year 1983. The suit properties are ancestral properties of the first defendant. The marital relationship between the first defendant and the plaintiff's mother broke down. The first defendant was not maintaining them. Therefore, they filed O.S.No.26 of 1987 for maintenance and the same was also decreed. Since the first defendant anticipated that the properties will be targeted while enforcing the maintenance claim, he sold the same in favour of the other defendants. According to the plaintiff, those alienations will not bind her, since the defendants were not amenable to effect partition. In order to enforce her claim as a member of the coparcenary, O.S.No.587 of 1992 came to be instituted.

3. The first defendant filed written statement controverting the plaint averments. Later remained ex-parte. He did not enter the witness box. The suit was contested only by defendants 2 and 3. They filed written statement contending that the first defendant had full right to deal with the suit properties and that the suit was not maintainable. The second defendant purchased 82 cents lying in the middle of the second item from the first defendant for valuable consideration dated 18.02.1992. Item Nos.3 and 4 were purchased by the second defendant from the first defendant on 12.03.1992 for valuable consideration. Based on the divergent pleadings, the trial Court framed the necessary issues as follows:-

"1. Whether the plaintiff is entitled for a preliminary decree for partition of her 1 / 2 share?

2. Whether the sale deeds dated 09.10.1996, 18.02.1992 and 12.03.1992 are true, valid and binding



upon the plaintiff?"

4. The plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.13. Defendants 2 and 3 examined themselves as D.W.1 and D.W.2 and the two brothers of the first defendant were examined as D.W.3 and D.W.4. Ex.B.1 to Ex.B.13 were marked. After a consideration of the evidence on record, the trial court passed preliminary decree as follows:-

"1. It is hereby decided that the plaintiff has 1/6th share in the 1st item; 1/2 share of the middle 82 cents in the 2nd item; 1/2 share of the western 55 cents in the 3rd item; and 1/2 share in the 4th item of the suit properties.

2. The plaintiff is at liberty to appoint an Advocate Commissioner to divide the above said properties by metes and bounds and allot the shares to the plaintiff in the suit properties.

3. That the relief of future mesne profits is relegated to separate proceedings under Order 20, Rule 12 of C.P.C.

4. That there is no order as to costs. (Plaintiff's cost Rs.720.25/- Cost list not produced by the defendants)."

5. Aggrieved by the same, the second defendant filed A.S.No.249 of 2006 before the Principal Sub Court, Madurai. The third defendant filed A.S.No.274 of 2006 before the very same Court. Both the appeals were taken up together and by common judgment and decree dated 15.04.2008, the decision of the trial Court was confirmed and the appeals were dismissed.

6. Questioning the same, S.A.(MD)No.33 of 2020 was filed against the judgment and decree made in A.S.No.274 of 2006. S.A.(MD) No.373 of 2014 was filed against the judgment and decree made in A.S.No.249 of 2006. Since both the second appeals arose out of a single suit, they were heard together. S.A.(MD)No.373 of 2014 was admitted on the following substantial questions of law:-

" 1) Whether the observation of the Courts below that the suit properties originally belonged to the grandfather of the plaintiff and hence, they are ancestral in the hands of the plaintiff is correct in view of Sections 6 and 8 of the Hindu Succession Act, 1956, when the suit properties are not ancestral to the grandfather of the plaintiff and when the grandfather had passed away subsequent to the coming into force of the Hindu Succession Act, 1956?

2) Whether the suit for partition is maintainable without impleading the brothers of the first defendant (father of the plaintiff) when the first defendant is entitled to undivided 1/3rd share only, as non-joinder of



co-sharers is fatal to a suit for partition?

3) Whether the Courts below failed to apply the principle of Hindu Law that alienation by father as Kartha is binding on the other coparcenaries, if the alienation is for family necessity? "

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S.A.(MD)No.33 of 2020 was admitted on the following substantial questions of law:-

i) Whether the suit as framed for partition is maintainable?

ii) Whether the Courts below were right in concluding that the suit properties were joint family properties and the plaintiff would get right by birth? "

7. The learned counsel appearing for the appellants submitted that the Courts below went completely wrong in considering the suit properties as ancestral properties. He would submit that there is sufficient evidence to show that the suit properties were purchased by the grandfather of the plaintiff. Following his demise, the suit properties were inherited by the first defendant Amirtharaj. Therefore, the suit properties would only be separate properties at the hands of the first defendant. They cannot be considered as the joint family properties amenable to partition. The learned counsel would state that the Courts below failed to appreciate the scope of Sections 6 and 8 of the Hindu Succession Act. He submitted that the substantial questions of law must be answered in the favour of the appellants and he called for reversal of the decision of the Courts below.

8. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

9. I carefully considered the rival contentions and went through the evidence on record.

10. The primary question that calls for determination is whether the suit properties can be considered as the ancestral properties amenable to partition. It is beyond dispute that the plaintiff was an unmarried daughter when the Tamil Nadu Act 1 of 1990 came into force. The appellants herein purchased the suit properties under Ex.A.11 and Ex.A.12. Ex.A.11 is dated 18.02.1992, while Ex.A.12 is dated 12.03.1992. In Ex.A.11 as well as Ex.A.12, it has been mentioned that the suit properties are ancestral properties. That is why, the Courts below have concurrently found that the suit properties are ancestral properties. The said findings have not been shown to be perverse. I answer the substantial questions of law against the appellants.



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11. These second appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal Subordinate Judge,
Madurai.

2. The District Munsif,
Thirumangalam.

Copy to

The Record Keeper, V.R.Section,
Madruai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.SEKAR, Advocate (SR-30780[F] dated 30/09/2021)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-30945[F] dated 01/10/2021)

+1CC to Mr.J.Gunaseelan Muthiah, Advocate, SR.No.30753 dated 30.09.2021

S.A. (MD) No.373 of 2014 &
S.A. (MD) No.33 of 2020
30.09.2021

NA (CO)
KB (01.02.2022) 5P 8C